

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 BRIAN SMITH, et al.,

4 Plaintiffs

5 v.

6 KELLOG COMPANY and KELLOG SALES
7 COMPANY,

8 Defendants

Case No.: 2:17-cv-01914-APG-GWF

**Order Granting Motions to Amend, to
Transfer, and to File Surreply**

[ECF Nos. 183, 185, 196]

9 The plaintiffs move to amend to add newly named plaintiffs whose claims against the
10 defendants are not subject to an arbitration agreement. The plaintiffs also move to transfer the
11 case to the Western District of Michigan so those claims can be adjudicated without further
12 awaiting the conclusion of the arbitration proceedings involving the original named plaintiff,
13 Brian Smith. The defendants oppose these motions and move for leave to file a surreply.

14 I grant the plaintiffs' motion to amend. *See* Fed. R. Civ. P. 15(a); *Foman v. Davis*, 371
15 U.S. 178, 182 (1962) ("Rule 15(a) declares that leave to amend 'shall be freely given when
16 justice so requires'; this mandate is to be heeded."). There is no evidence of bad faith. There has
17 been some delay while the arbitration proceedings for plaintiff Brian Smith have proceeded, but
18 there also have been recent anticipated developments in the case law that explain why the
19 plaintiffs have awaited significant rulings regarding the impact of arbitration agreements in the
20 employment context. Kellog has not identified any prejudice or argued that amendment would
21 be futile. The plaintiffs' only prior attempt at amendment was withdrawn. The factors thus
22 favor granting leave to amend. *Sonoma Cty. Ass'n of Retired Emps. v. Sonoma Cnty.*, 708 F.3d
23 1109, 1117 (9th Cir. 2013).

1 I grant the motion to transfer, and I transfer the case to the Western District of Michigan.
2 See 28 U.S.C. §§ 1404(a), 1631. I need not resolve whether I have personal jurisdiction over the
3 defendants with respect to the newly named plaintiffs' claims because either way, transfer to the
4 Western District of Michigan would be appropriate under § 1631 or § 1404(a). Section 1631
5 permits transfer if this court lacks personal jurisdiction over the defendants. *See Fed. Home Loan*
6 *Bank of Boston v. Moody's Corp.*, 821 F.3d 102, 114-19 (1st Cir. 2016), *abrogated on other*
7 *grounds by Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553 (2017); *Chavez v. Dole Food Co.,*
8 *Inc.*, 836 F.3d 205, 223-24 (3d Cir. 2016) (en banc); *Gray & Co. v. Firstenberg Mach. Co.*, 913
9 F.2d 758, 761-62 (9th Cir. 1990). Alternatively, if this court has personal jurisdiction over the
10 defendants, transfer would be appropriate under § 1404(a).

11 Both sections require that the action could have been brought originally in the transferee
12 court. There is no dispute these plaintiffs' claims could have been brought in the Western
13 District of Michigan. Both sections also require that the transfer be in the interest of justice. The
14 transfer is in the interest of justice because dismissal would be "time-consuming and justice-
15 defeating." *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990) (quotation omitted).
16 Additionally, the defendants are headquartered in the Western District of Michigan, so it is a
17 convenient forum for witnesses and for access to documentary evidence. Through the motion to
18 transfer, that forum is also now the plaintiffs' forum of choice. The defendants do not dispute
19 the forum would be convenient and, in fact, the defendants dispute this court would be a proper
20 forum for these claims. Transfer thus is in the interest of justice. *Jones v. GNC Franchising,*
21 *Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).

22 IT IS THEREFORE ORDERED that the motion to amend (ECF No. 183) is
23 **GRANTED.**

1 IT IS FURTHER ORDERED that the defendants' motion for leave to file a surreply
2 **(ECF No. 196) is GRANTED.**

3 IT IS FURTHER ORDERED that the plaintiffs' motion to transfer **(ECF No. 185) is**
4 **GRANTED.** The claims of all plaintiffs are **TRANSFERRED to the Western District of**
5 **Michigan.** The clerk of the court shall transfer the case to that district and close this file.

6 DATED this 3rd day of December, 2018.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE